

September 15, 2009

EX PARTE

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
Room TW-A325
445 12th Street, SW
Washington, DC 20554

Re: **Workshop Response; WC Dkt. Nos. 09-51, 07-245, 05-25, CC Dkt.
No. 98-147**

Dear Ms. Dortch:

Pursuant to the public notice released in WC Dkt. No. 09-51,¹ please find enclosed the response to the first round of broadband workshops filed on behalf of tw telecom inc., One Communications Corp., Cbeyond, Inc. and Integra Telecom, Inc.

Please let us know if you have any questions or concerns in connection with this filing.

Sincerely

/s/

Jonathan Lechter

Attachment

¹ *Commission Welcomes Responses to Staff Workshops*, Public Notice, DA 09-1992 (rel. Sept. 1, 2009).

BEFORE THE
Federal Communications Commission
WASHINGTON, D.C.

In the Matter of)	
)	
A National Broadband Plan For Our Future)	WC Dkt. No. 09-51
)	
Special Access Rates for Price Cap Local)	WC Dkt. No. 05-25
Exchange Carriers)	
)	
Implementation of Section 224 of the Act;)	
Amendment of the Commission's Rules and)	WC Dkt. No. 07-245
Policies Governing Pole Attachments)	
)	
Deployment of Wireline Services Offering)	CC Dkt. No. 98-147
Advanced Telecommunications Capability)	
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**WORKSHOP RESPONSE OF TW TELECOM, ONE COMMUNICATIONS, CBeyond
AND INTEGRA**

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**WORKSHOP RESPONSE OF TW TELECOM, ONE COMMUNICATIONS,
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tw telecom inc., One Communications Corp., Cbeyond, Inc. and Integra Telecom, Inc. (herein, "Joint Commenters"), by their attorneys, hereby file this workshop response pursuant to the request for comment on the first round of Broadband Workshops.¹

I. INTRODUCTION AND SUMMARY

The record from the broadband workshops demonstrates that customers' demands for broadband services vary widely and are determined by many complex factors beyond

¹ *Commission Welcomes Responses to Staff Workshops*, Public Notice, DA 09-1992 (rel. Sept. 1, 2009).

simply advertised bandwidth.² As a result, the presence of multiple providers of broadband suitable for one class of customer (for example those demanding mobile wireless broadband), does not mean that there are multiple suppliers of broadband needed to meet the needs of a different class of customer (for example business customers). In fact, while some market segments may enjoy multiple broadband options delivered over multiple facilities and platforms, others may face few or none.

The workshop panelists corroborated what the Joint Commenters and other wireline and wireless carriers have been arguing for years: that wireless broadband is not a substitute for wireline broadband. For example, the record in the workshops demonstrates that wireless broadband is not a substitute for residential wireline broadband service. Moreover, while cable companies compete in the provision of wireline residential broadband services, cable company networks often do not serve rural and sparsely populated areas. In such areas, the incumbent often controls the only wireline connection to the end user, thus leaving them with an opportunity and incentive to slow the development of broadband competition by denying, delaying, degrading, and overpricing loop facilities and associated collocation arrangements needed by CLECs.

The record from the workshops also demonstrates that business customers and purchasers of wireless backhaul cannot rely on wireless to meet their broadband needs. These customers demand service with attributes that are only available on service provided via traditional wireline facilities; fixed and mobile wireless as well as cable

² See Comment Sought on Defining “Broadband” NPB Public Notice #1, Public Notice, DA 09-1842 at 2 (rel. Aug. 20, 2009) (“*Broadband Definition Notice*”) (“Much of the discussion of any proposal to define ‘broadband’ tends to center on download and upload throughput. Download and upload throughput is important, but neither is precise or diverse enough to describe broadband satisfactorily.”).

modern services are simply not up to the task. Moreover, as many workshop panelists noted, because incumbent LECs' wireline facilities are the only wireline facilities available at the vast majority of commercial end-user locations, incumbent LECs are able to exercise market power to raise price and impede broadband deployment to the business broadband and wireless backhaul markets.³

In addition to incumbent LECs' market power over wireline loop facilities, the workshop presenters highlighted other sources of market power that threaten robust deployment of broadband to both residential and business customers. Most importantly, as many of the panelists explained, utility pole owners delay and even prevent broadband deployment by slow-rolling and overpricing the application process and make-ready work.

Accordingly, the workshop presentations have confirmed that the National Broadband Plan must address many of the most stubborn obstacles to wireline broadband deployment. Most obviously, the Commission can do so by (1) reducing special access rates to just and reasonable levels and eliminating exclusionary terms in special access volume/term discount offers; (2) ensuring that incumbent LECs are not permitted to deny access to UNEs by simply asserting without basis that there are "no facilities"; (3) ensuring that competitors can obtain access to incumbent LEC remote terminals in a

³ In the context of wireless backhaul, panelists have discussed the connection from the wireless operators' Mobile Switching Center to the wireless tower as the "middle mile" because the "last mile" is the wireless connection from the tower to the customers' handset. However, "middle-mile" in the wireless backhaul context is **not** equivalent to stand-alone "transport" in the wireline context (i.e., the link between central offices). Rather, the wireless tower is akin to any end-user location served by a "last-mile" connection (i.e., loop facility). The incumbent LECs tariff connections to wireless towers as a loop (channel termination, or channel termination plus transport) and competitors must justify construction to the wireless tower based on the revenue generated from that single location, as would be the case for a connection to a downtown office building.

timely fashion and at reasonable prices; and (4) reforming the pole attachment rules by adopting national rules governing the application and make-ready process consistent with the proposals of Fibertech and the Joint Commenters and by eliminating the arbitrary disparity in pole attachments rates paid by telecommunications carriers and cable companies.

II. THE FCC MUST RECOGNIZE THAT DIFFERENT MARKET SEGMENTS DEMAND DIFFERENT BROADBAND SERVICE ATTRIBUTES

As many of the workshop panelists observed, certain aspects of the broadband marketplace are technologically dynamic, with numerous service providers seeking to deploy various innovative new offerings. For example, fixed wireless providers are offering broadband service using mesh networks and tower-based services over licensed and unlicensed spectrum. Mobile wireless carriers are beginning to deploy WiMax and LTE technologies that provide higher advertised bandwidth levels than current 3G networks. Cable modem providers are beginning to offer service *via* DOCSIS 3.0, which can provide download speeds at up to 50 Mbps per second with future possible speeds of 1 Gbps. Satellite broadband providers are also improving service to provide higher downstream bandwidth capacity on a nationwide basis.

But the panelists also repeatedly observed that one broadband size does not fit all,⁴ and, while some market segments may have many broadband options, others have

⁴ Several commenters in response to the Broadband Definition notice made a similar point. *See* AT&T Comments, WC Dkt. No. 09-51 at 1 (filed Aug. 30, 2009) (“Specifically, the Commission must first define the discrete set of applications and online capabilities that must be made available to all Americans to achieve the Recovery Act’s goals. As discussed below, for residential customers those services should include basic web-browsing capability, email, and online services that will further the Recovery Act’s goals of making broadband a tool for advancing education, energy efficiency,

few or none at all. Indeed, as the FCC recently reiterated in its broadband definition Public Notice, customer demand patterns are defined by several key service characteristics beyond a particular advertised speed. These attributes include latency, jitter, the extent to which the network is shared, whether the service has sufficient upstream capacity, whether bandwidth levels (throughput) are guaranteed or are “best effort,” whether there are “up-time” guarantees, and whether total downstream bandwidth is capped or particular applications are banned due to their burden on the network.⁵

The substantial differences in demand among categories of customers has important implications for the National Broadband Plan. The Commission cannot rely on the abundant supply of one type of broadband as the basis for a conclusion that there is sufficient deployment of broadband to customers for whom the abundantly supplied service is insufficient. The Commission must therefore study closely the major differences in broadband demand so that it can craft a Plan that promotes deployment of broadband that meets all major categories of demand. Workshop panelists highlighted several of these important distinctions.

A. Residential Wireline Broadband Services Do Not Satisfy the Needs of Business Customers

Services designed for the residential market (e.g., cable modem and FiOS) are generally not purchased by enterprise customers because residential services lack the attributes demanded by business customers. As Verizon stated in the workshops, it does

healthcare, and public safety. Other services and applications may be essential to permit business, industrial, and public-safety customers to further the Act’s goals.”).

⁵ See *Broadband Definition Notice* at 3 ([T]here are network characteristics – such as latency, reliability, and mobility – that are relevant for certain applications but not others. Accordingly, we seek comment on . . . how factors such as latency, jitter, traffic loading, diurnal patterns, reliability, and mobility should specifically be taken into account.”).

not plan to increase the upstream capacity of FiOS because the only customers demanding high upstream capacity are the few “small businesses” that subscribe to the FiOS service.⁶

Most business customers also demand reliable and stable bandwidth speeds. One workshop panelist asserted that even a next-generation DOCSIS 3.0 cable modem system cannot provide stable and reliable bandwidth because bandwidth is shared near the edge of the network at a local node.⁷ To mitigate the harm that one customer’s usage patterns can cause to other customers’ service, cable modem providers impose bandwidth caps and restrictions for “heavy users;”⁸ something that many business customers cannot tolerate. But even with these practices, cable modem providers often do not guarantee a particular level of throughput. Advertised speeds are merely theoretical maximums that providers try their best to maintain.⁹

⁶ See Tony Dimaso, Vice President Corporate Strategy and Development, Verizon, National Broadband Workshop, Deployment-Wired at 127, August 12, 2009.

⁷ See Marc Goldberg, ASSIA, National Broadband Workshop, Technology/Fixed Broadband at 100, Aug. 13, 2009 (“Cable is a shared medium, it’s a little different sort of calculation, but you take the peak speeds, which will be at least 155 megabits per DOCSIS 3, divide that by some appropriate over subscription factor, and again, you end up with a number of about 22 megs.”).

⁸ See Tom Lowry, *Time Warner Cable Increases Internet Usage Pricing*, BusinessWeek.com, Mar. 31, 2009, available at http://www.businessweek.com/technology/content/mar2009/tc20090331_726397.htm (“In the case of Time Warner Cable, customers will be charged from \$29.95 to \$54.90 a month, based on data consumption and desired connection speed. Customers will be charged \$1 for each gigabyte (GB) over their plan’s cap. Time Warner Cable offers four cap levels of 5, 10, 20, and 40 GB. A download of a high-definition movie typically eats up about 8 GB.”).

⁹ For example, the disclaimer on Cox’s business site states that “Cox cannot guarantee uninterrupted or error-free Internet service or the speed of your service. . . . Actual modem speeds vary. Number of users and network management needs may require Cox

By contrast, networks capable of serving business customers locate facilities utilizing shared capacity much closer to the core network, permitting more robust and reliable service than networks that are designed for residential service can generally offer. Business broadband networks are more costly to construct because more network facilities and capacity are dedicated to each customer, but such dedicated facilities and capacity ensure that one customer's usage patterns do not affect another customer. For example, an end-user served by a DS3 has a direct connection (generally fiber) between the end-user and the carrier's central office (or equivalent). The DS3 signal is then multiplexed to a higher capacity circuit at the central office and transmitted along progressively higher capacity pipes as the traffic moves towards the network backbone. At every aggregation point, carriers ensure that there is sufficient capacity to avoid bottlenecks so that throughput levels and service guarantees are maintained. Residential broadband networks do not contain these capabilities.

B. For The Foreseeable Future, Wireless Broadband Service Will Not Serve As A Substitute For Most Residential and Enterprise Wireline Customers

Because of the technical characteristics of wireless networks, wireless broadband services are unlikely in the foreseeable future to constitute a full substitute for even residential wireline broadband service, let alone business wireline broadband service. Rather, wireless broadband will serve as a complement for most customers and will be the first choice only for customers that (1) highly value mobility or (2) do not have the option of wireline broadband. Indeed, as one Verizon employee who participated as a

to modify upstream and/or downstream speeds. Other restrictions apply.” See <http://ww2.cox.com/business/northernvirginia/data/business-internet.cox>.

workshop panelist observed, Verizon's LTE and WiMax technologies are a complement to, not a substitute for, wireline broadband services.¹⁰

The limitations of wireless broadband service are the result of capacity sharing close to the network edge as well as spectrum scarcity. While 4G technologies such as LTE offer theoretical DSL-level transmission speeds, as more handsets access each tower, actual network speeds drop well below advertised levels.¹¹ While it is possible to mitigate some of these sharing problems by, among other things, splitting cells so that each cell covers a very small geographic area, it is likely economically infeasible to avoid the consequences of a shared wireless network on a widespread basis.¹² To further limit

¹⁰ See Tom Sawanobori, Vice President, Network and Technology Strategy, National Broadband Workshop, Deployment-Wireless at 17, Aug. 12, 2009 ("By enabling consumers to access broadband with higher speeds and capacity, LTE and other 4G technologies will provide consumers with even greater value. While these wireless networks will provide higher capabilities, they will not be able to match the kind of throughput you'll see on wired technologies such . . . as FiOS. However, we think that there's [sic] still compliment for these, both technologies to exist . . . wireless broadband may be the only technology available [in some places] so that this 5 to 12 megabits per second average will be more than adequate for today and the future applications for those where they don't have a wire connection."); *id.* at 51-52 ("Clearly, when we have fiber optic offerings, those are preferred by many customer for the video capability . . . wireless mobile broadband really complements that, so people -- most people want to be able to move, have their broadband on the go . . . [s]o I think most customers utilize that as a complement, so they are using both.").

¹¹ See Stagg Newmann, National Broadband Workshop, Technology/Fixed Broadband at 152, Aug. 13, 2009 ("For example, LTE is getting compared, because it's four to eight megabits per second, with some of these other technologies. I can burst that rate, but as Doctor Henry said, everything shares [the network] at different points LTE shares right at the edge of the network. . . . So we need to know what does it mean about capacity allocated per user.").

¹² See Craig E. Moffett, Vice President and Senior Analyst, U.S. Telecommunications, Cable and Satellite, Sanford Bernstein, National Broadband Workshop, Deployment-Wired at 13-14, Aug. 12, 2009 ("Craig Moffett-Wired Deployment") ("[O]ur work suggests that wireless, while it can certainly compete with terrestrial broadband for speeds, has a real hard time competing with terrestrial broadband for throughput. That is,

the effects of high-bandwidth users on other users of the network, wireless carriers impose strict usage caps on customers. These caps will likely remain in place for the foreseeable future.¹³ Indeed, the inherent limitations of wireless technology will make it difficult, if not impossible, to ever match the stability and speed of wireline broadband service.¹⁴ As one wireless executive explained, it is difficult for wireless carriers to compete with ADSL service in those places where ADSL is both available and of adequate quality.¹⁵ Given these limitations, it is unsurprising that the panelists, including

speed times duration times session frequency. And so there are -- the economics of wireless don't look like they are a fully viable substitute.”).

¹³ See Craig Moffett-Wired Deployment at 27-28 (“And that if you think about throughput . . . you can't support . . . anything like the kind of oversubscription levels in a wireless broadband network that you have today in a wired voice network. And therefore, you need a radically smaller radii in order to support a large number of simultaneous users and the cost structure of the network would expand exponentially. At least for the foreseeable future, that means that for very high bandwidth applications, you're likely to see usage caps . . . because you simply cannot charge enough to make it economically attractive.”).

¹⁴ See Marcus Weldon, Chief Technical Officer, Wireline Networks Product Division, Alcatel-Lucent, National Broadband Workshop, Deployment-Wired at 36, Aug. 12, 2009 (“Marcus Weldon-Wired Deployment”) (“A typical 10 megahertz of spectrum -- the typical Shannon limit of information capacity is 8 megabits per second. . . . And that's meant to be shared among hundreds of users within that cell site. So clearly, spectrum doesn't solve the problem.”).

¹⁵ See Ed Evans, Chairman and CEO, Stelera Wireless, National Broadband Workshop, Wireless Broadband Deployment-General at 39-40, Aug. 12, 2009 (“[W]hile DSL is prevalent in a lot of rural markets, I mean, candidly, there's a lot of bad DSL that's out there. . . . As you get farther and farther away from that central office, we've seen speeds that cap out at 256k [and] it's been very easy to cherry pick those guys off the edge of their networks until you get closer to their CO where, you know, their speeds are closer to [1.5 Mbps].”). Said another wireless provider “I would definitely agree. You know, in our markets, we don't try and compete with DSL and cable. I mean, quite frankly, we can't do that. You know, we can't deliver what they can deliver, but again, in our rural areas, we go where DSL and cable aren't.” Scott Zimmer, President, Air Advantage, National Broadband Plan Workshop, Wireless Broadband Deployment-General at 41, Aug. 12, 2009.

a Verizon representative, believed that few customers were substituting wireless broadband for wireline broadband service.¹⁶

Nor did the panelists believe that wireless broadband could provide a viable substitute for wireline backhaul. Wireless backhaul is, in most instances, simply not up to the task.¹⁷ Many panelists argued that wireless backhaul is an inferior product to wireline backhaul and generally will only be used in those places where bandwidth demands are relatively low and/or there is no wireline backhaul available.¹⁸ The need for robust backhaul is becoming more, not less, important because of new, data rich 4G wireless services. Therefore, it is likely that wireless carriers' reliance on wireline backhaul will only increase over time.

¹⁶ See Thomas Sawanobori-Wired Deployment at 51 (“So with regard to the fixed versus the mobile . . . we’re clearly seeing customers who still want and desire DSL capabilities.”); Link Hoewing, Verizon, National Broadband Plan Workshop, Building the Fact Base at 62, Aug. 19, 2009 (“[O]ne of the [primary] factors that [Bank of America analysts] looked at was how many people were actually using primarily broadband over wireless. I wouldn’t say there’s substitution going on.”).

¹⁷ See Hunter Newby, CEO, Allied Fiber, National Broadband Plan Workshop, Deployment-Wired at 23, Aug. 12, 2009 (“Hunter Newby-Wired Deployment”) (“But, you know, as Craig [Moffett] pointed out regarding wireless, a lot of [the new services] cannot be supported unless there’s fiber to the tower.”); Marcus Weldon-Wired Deployment at 38 (“[F]iber architectures are being looked to back haul 3G and LTE deployments, for example. . . . So I do agree that wireless will not solve the problem.”).

¹⁸ See Jake MacLeod, Principal Vice President and CTO, Bechtel Telecommunications, National Broadband Plan Workshop, Wireless Broadband-Deployment at 46-48, Aug. 12, 2009 (“[W]ireless is definitely a solution, but typically only where you can’t get fiber or high-speed Ethernet solution. So, consequently, the back haul issue is coming to the forefront with the advent of LTE. . . . [A]gain, the ultimate solution is fiber to the cell site. . . . [I]f you have to use wireless microwave . . . do it, but do it in the most expeditious manner possible because that’s the most unstable part of your entire system. That’s what causes the problems and that’s what limits your bandwidth as well.”); David Armentrout, President and CEO, FiberNet, National Broadband Plan Workshop, Deployment-Wired at 45, Aug. 12, 2009 (“David Armentrout-Wired Deployment”) (“Any [towers served by] microwave are the ones that are very remote, and they can’t get access to even copper.”).

III. THE FCC CAN SPEED THE DEPLOYMENT OF WIRELINE BROADBAND BY ADDRESSING PROBLEMS CAUSED BY THE ABUSE OF MARKET POWER.

As the foregoing discussion demonstrates, the workshop panelists generally agree that a large portion of the demand for broadband can only be satisfied by wireline services. This appears to be true for most residential broadband demand, virtually all business broadband demand and most backhaul demand. Moreover, the panelists appear to agree that there is little chance that wireless will be able to meet the demand of these market segments in the foreseeable future. It is therefore critical that the National Broadband Plan include policies designed to eliminate the barriers to wireline broadband deployment. The workshop panelists have identified two important types of market power that increase the cost of and delay the deployment of wireline broadband: (1) incumbent LEC control of loop facilities as well as the space needed to collocate equipment to provide broadband over such facilities and (2) incumbent LEC and utility control over pole attachments.

A. Access to Incumbent LEC Loops and Remote Terminals

The incumbent LECs continue to control the only wireline loop facility in a large number of locations in which broadband facilities deployment is either non-existent or insufficient. For example, the incumbents control the only wireline loop facility to residential and small business customers in the many rural and sparsely populated areas that cable company networks do not reach. This is true, for example, in many parts of West Virginia in which FiberNet seeks to provide broadband. In fact, FiberNet has deployed fiber transport facilities to many incumbent LEC remote terminal facilities in West Virginia to which the incumbent itself has not deployed fiber and from which the incumbent does not offer broadband. In order FiberNet to offer broadband at these

locations, it must obtain access to the remote terminal facility to collocate its broadband electronics¹⁹ and to the copper loop that extends to the end user customer.²⁰ But FiberNet has encountered stubborn resistance from the incumbents. It has been trying to establish collocations in (or even near) West Virginia remote terminals for several years and still has been unsuccessful in establishing a single such collocation arrangement. In addition, its request for unbundled loops, even those connected to central offices, are routinely rejected based on unverifiable claims of “no facilities.” This leaves FiberNet with no choice but to either pay exorbitant special access prices or forgo serving the customer. All of these problems cause West Virginia customers to go without broadband or to pay too much for the service that is offered.

Similarly, the incumbent LECs also control the only loop facilities to most commercial buildings throughout the U.S. This has given the incumbents the ability to overprice special access loop facilities. Wireline competitors need these facilities in order to provide business broadband services to locations where loop deployment is not efficient and wireless carriers need these facilities in order to backhaul traffic. High special access prices have an extremely harmful effect on business broadband and

¹⁹ See David Armentrout-Wired Deployment at 73 (“[I]t would be great if we could get access to those remote terminals. Because . . . in most places we have middle mile or we have network backbone fiber that is in proximity to RT, so we could support high bandwidth for MDUs or DSLAMs to reach customers that are at a distance. . . . There is an enormous opportunity to deliver broadband to the unserved and underserved if we can get access to the RTs.”).

²⁰ See David Armentrout-Wired Deployment at 7 (“And then finally, access to last-mile loop facilities that are purchased either via Section 251 unbundled network element or special access. We need these loops . . .”).

wireless broadband services.²¹ Even AT&T faces this problem when it provides wireless services out of region.²²

Accordingly, the National Broadband Plan should include a roadmap for addressing the problems caused by incumbent LECs' abuse of market power over wireline loop facilities. First, the FCC should adopt a regime for limiting the incumbents' opportunities to reject UNE loop orders based on unverifiable "no facilities" claims. Second, the FCC should adopt an aggressive regime for enforcing competitors' right to collocate or at least obtain access to incumbent LEC remote terminal facilities. Third, the workshop panelists agree that the FCC must rapidly conclude its special access proceeding and impose regulations that ensure that special access rates and terms remain just and reasonable and that incumbent LECs are not permitted to enforce exclusionary provisions in volume and term discount offers.²³ These steps would yield substantial benefits for the broadband marketplace.

²¹ See Hunter Newby-Wired Deployment at 23 ("But, you know, as Craig [Moffett] pointed out regarding wireless, a lot of [the new services] cannot be supported unless there's fiber to the tower."); Marcus Weldon-Wired Deployment at 38 ("[F]iber architectures are being looked to back haul 3G and LTE deployments, for example. . . . So I do agree that wireless will not solve the problem.").

²² Peter Burroughs, *Can AT&T Meet iPhone Network Demands?*, BusinessWeek.com, Aug. 23, 2009, available at http://www.businessweek.com/technology/content/aug2009/tc20090823_412749.htm ("One of the biggest choke points in AT&T's network is found in what's called back-haul capacity, or the size of the pipe that connects cell towers to the Internet, according to a person familiar with the matter. . . . The executive says some Apple staffers fumed last year when AT&T told them of its plans to hype cell tower upgrades without investing in backhaul capacity. The concern was that AT&T's improvements might make it appear people were getting a strong signal on the phone, though the lack of backhaul pipes might still interfere with their phone calls or Web surfing").

²³ Mark Cooper, Director of Research, CFA, National Broadband Plan Workshop, Unserved and Underserved at 64-65, Aug. 12, 2009 ("One point on this question -- we have to look at it. I think the special -- and Dave Burstein mentioned it -- the evidence in

B. Access to Pole Attachments.

As with incumbent LEC loop facilities in many locations, utilities own the only poles to which firms seeking to deploy wireline networks can attach their facilities. Unfortunately, pole owners, both incumbent LECs and utilities, have exercised their market power over poles to deny, delay and overprice pole access. For example, to date, FiberNet has deployed approximately 3,000 miles of fiber transport in West Virginia. The most significant obstacle to further deployment of fiber transport is FiberNet's inability to obtain access to pole attachments in a timely manner. The make-ready process is fraught with unreasonable delays and unjustifiable charges.²⁴ In addition, the pole attachment process distorts market outcomes because utilities are permitted to charge telecommunications carriers attachment fees that are two-to-three times higher than the fees paid by cable companies. All of these problems delay and increase the price of broadband service provided to both residential and business customers.²⁵

the special access case, I think, is crystal clear. It's been sitting there for years. . . . The special access docket is done, right in order, and fixed the market failure. Now, George may disagree, but he apparently hasn't read the docket. But you've heard everyone here talk about that problem in that docket. And so the answer is clear: It's done; you've got the record; fix it."); Sascha Meinrath, Director, Open Technology Initiative, National Broadband Plan Workshop, Technology/Wireless at 52-53, Aug. 13, 2009 ("Sascha Meinrath-Wireless Technology") ("If I could add to that and building a little bit on what Milo was saying, the costs that are associated with deploying especially in rural areas to the backhaul, this is a clarion call for special access to be addressed which I know is something that's being talked about quite actively, but needs to happen if you want to spread connectivity to rural areas.").

²⁴ See David Armentrout-Wired Deployment at 121-122 ("[T]he make ready piece [is] really broke. Because you can get the application processed in 45 days, [but] that doesn't really happen, ever. . . . [The FCC should mandate that] the ILECs or the pole owners . . . have to provide a list of approved contractors that the CLEC could cho[o]se whom he could negotiate his best deal with.").

²⁵ See generally Comments of Time Warner Telecom, Cbeyond and CompTel, WC Dkt. No. 07-245 (filed Mar. 7, 2008) ("*Pole Attachment Comments*"); Reply Comments of

Accordingly, the National Broadband Plan should include a comprehensive plan for reforming pole attachment regulations. Among other things, the Commission should adopt the national rules proposed by Fibertech for addressing make-ready problems.²⁶ In addition, the FCC should ensure that the same rules apply to all attachers, regardless of whether they are telecommunications carriers or cable operators.²⁷ This means that the FCC should eliminate the differential between the existing telecommunications carrier attachment rate and the cable attachment rate by setting a uniform pole attachment rate at a level equal to the current cable rate.

Time Warner Telecom, One Communications and CompTel, WC Dkt. No. 07-245 (filed Apr. 22, 2008).

²⁶ Fibertech, Petition for Rulemaking of Fibertech Networks, RM-11303 (filed Dec. 7, 2005).

²⁷ *See, e.g.*, Dallas Clement, Executive Vice President and Chief Strategy and Product Officer, Cox Communications National Broadband Plan Workshop, Deployment-Wired at 35-36, Aug. 12, 2009 (“So, you know, and I think earlier there were comments on pole attachments and rights of way. And, you know, I’m not sure that’s a red. That’s probably a yellow. There’s not consistency in those rules.”).

IV. CONCLUSION

The Commission should adopt the suggestions of the Joint Commenters as discussed herein in the National Broadband Plan.

Respectfully submitted,

/s/ Thomas Jones

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